

M. J. REEVES

IBLA 78-621

Decided June 4, 1979

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting as untimely, two notices of location for mining claims. Manana Nos. 624-29; 632-45.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Determination of Validity -- Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2, the owner of a mining claim located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management office within 90 days of location of the claim. A notice must be received and date stamped in the BLM office within the 90-day period to be timely filed.

APPEARANCES: M. J. Reeves, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

M. J. Reeves appeals from a decision dated June 28, 1978, of the New Mexico State Office, Bureau of Land Management (BLM), returning his mining claim location notices because they had not been filed within 90 days after the date of location as required by section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2. The notices related to the location of mining claims on March 24, 1978, and March 25, 1978.

1/ The 90-day deadlines, therefore, fell on

1/ The claims involved are Manana Claims Nos. 624-629 and 632-645.

June 22, 1978, and June 23, 1978. These notices were filed in the New Mexico State Office on June 26, 1978.

Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *.

Appellant claims that he mailed the notices on the morning of June 23 and that the notices, as far as he knew, were in the possession of the New Mexico State Office by being in the office's post office box on the same day. The Board notes that the appellant was already beyond the 90-day period with respect to one of the notices when he mailed them.

[1] The Board has held numerous times that when a notice of a mining claim is not filed with the BLM within 90 days from the date of location as required by the statute and regulation, it has no force and effect and must be returned to the appellant. William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978); and Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978). Under the regulation, the requirements for filing are clear. The documents must be received and date stamped by the proper BLM office. 43 CFR 3833.1-2(b). Mailing within the 90-day period of a notice of location which is not received until after the 90-day period does not constitute timely filing. Therefore, both notices were properly rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Edward W. Stuebing
Administrative Judge

